NO. 06-730

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON; ET AL.,

Petitioner,

v.

WASHINGTON STATE REPUBLICAN PARTY;
WASHINGTON STATE GRANGE; ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONSE BY RESPONDENT WASHINGTON STATE GRANGE IN SUPPORT OF PETITION

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QUESTION PRESENTED FOR REVIEW

As stated in the Washington State Grange's pending Petition arising from the same Ninth Circuit decision (Supreme Court No. 06-713), the question presented by these Petitions for review is as follows:

In *California Democratic Party v. Jones*, 530 U.S. 567, 585-586 (2000), this Court specified how States could structure a top-two primary system that does not violate the associational rights of a political party. Pursuant to the Initiative power which the People of the State of Washington reserved to themselves in their State Constitution, the voters of the State of Washington enacted a top-two primary law that the Washington State Grange had drafted to comply with this Court's ruling in *Jones*. That law makes the State primary a contest to select the two most popular candidates for the November ballot – regardless of party nominations or party selection. That law also allows candidates for certain offices to disclose on the ballot the name of the party (if any) which that candidate personally prefers.

The Ninth Circuit invalidated this top-two primary system in its entirety, holding that the First Amendment (applied to the States through the 14th Amendment) prohibits a State from so allowing a candidate to disclose the name of the party he or she personally prefers on the ballot.

Question Presented: Does the First Amendment prohibit top-two election systems that allow a candidate the freedom to disclose on the ballot the name of the party he or she personally prefers?

NOTICE OF RELATED PETITION

The Washington State Grange, named as a "Respondent" in this Petition (No. 06-730), has a related Petition pending before this Court. That Petition arises out of the same Ninth Circuit decision, and bears the No. 06-713.

The Washington State Grange and State were both aligned as a Defendant-Intervenors in the district court and as Appellants in the Ninth Circuit.

The Washington State Grange files this Response in support of the State's related Petition pursuant to Supreme Court Rule 12.6.

REASONS FOR GRANTING THE STATE OF WASHINGTON'S PETITION

The Washington State Grange's pending Petition details why its Petition — and thus the State's Petition as well — should be granted.

In short, this case concerns the lifeblood of democracy in our country: State-run elections. And its central issue boils down to the fundamental distinction between two First Amendment rights: a political party's associational right to control the selection of the name of the person who is that party's ***nominee***, and a political candidate's free speech right to state the name of the party he or she personally ***prefers***.

This Court should grant review of the State's (and the Washington State Grange's) Petitions because the Ninth Circuit's decision below ignores that fundamental distinction. Instead:

(1) The Ninth Circuit's decision contradicts this Court's ruling in *California Democratic Party v. Jones*, 530 U.S. 567 (2000). Under the Ninth Circuit's decision, a top-two primary system is unconstitutional if it allows a party's name to appear on the ballot – even when that system has the nonpartisan result of selecting the top two vote getters over all regardless of any party's name.

(2) The Ninth Circuit's decision turns this Court's First Amendment jurisprudence on its head. Under the Ninth Circuit's decision, the First Amendment is a gag that prohibits States from allowing candidates to provide voters a highly relevant piece of information about themselves on the ballot. In this case, the piece of information is a statement by the candidate disclosing to voters the name of the political party (if any) which that political candidate prefers.

(3) The Ninth Circuit's decision disregards our Constitution's fundamental principles of separation of powers and federalism. The Ninth Circuit panel in this case reached out and struck down a voter-approved State law on a State issue (State-run elections) by resorting to a hypothetical about a politician who "might" not be candid and speculation that some State voters "may" not understand the meaning of the "preference" statement allowed by the Initiative measure they overwhelmingly voted to enact.

(4) The Ninth Circuit's decision has immediate nationwide significance even beyond the 59 million Americans who live within the Ninth Circuit's geographic dominion. That is because the political parties insist that the Ninth Circuit's decision also makes the

"Montana" system currently used in a dozen States unconstitutional.

Lastly, the Washington State Grange notes that, apparently due to a computer processing or printing glitch, the text of the State enactment at issue (Initiative 872) in the Appendix to the State's Petition in this Case No. 06-730 inadvertently omits the strike-outs and underlining as they appeared in that measure to show the deletions and additions made by that law. The text of Initiative 872 in the Appendix to the Washington State Grange's Petition in Case No. 06-713, however, contains those strike-outs and underlines as they appeared in the Initiative enacted by Washington's voters.

CONCLUSION

For the reasons summarized above and fully stated in the Washington State Grange's related Petition, the Washington State Grange supports this Court's granting the State's Petition along with the Grange's previously filed Petition in Case No. 06-713.

RESPECTFULLY SUBMITTED.

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